

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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)	
UNITED STATES OF AMERICA,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No.
)	Filed:
XTO ENERGY, INC.,)	Judge :
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action against XTO Energy, Inc. (“Defendant”) seeking injunctive relief and a civil penalty for violating the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251, et seq. The violation occurred at Defendant’s natural gas well pad and storage facility located at 301 Marquardt Road, in Hughesville, Lycoming County, Pennsylvania. The United States seeks (1) a penalty under Section 309(d) of the CWA, 33 U.S.C. 1319(d), for unauthorized discharges of contaminated flowback fluid and produced fluid into waters of the United States from tanks and valves associated with Defendant’s hydraulic fracturing operations and (2) injunctive relief requiring Defendant to perform actions to remedy conditions causing the discharge and to prevent future discharges.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the matter pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1331, 1345 and 1355.

3. The United States has authority to bring this action on behalf of the Administrator of EPA (“Administrator”) under Section 506 of the CWA, 33 U.S.C. § 1366, and under 28 U.S.C. §§ 516 and 519.

4. Notice of commencement of this action has been given to the Commonwealth of Pennsylvania pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

5. Venue is proper in the Middle District of Pennsylvania pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b) and 28 U.S.C. § 1391(b) as this is a judicial district within which Defendant is doing business and within which the judicial district the claims arose.

DEFENDANT

6. Defendant is a corporation organized under the laws of Delaware with its principal place of business located at 810 Houston Street, Fort Worth, Texas. Defendant operates a domestic energy company focused on oil and natural gas production, including hydraulic fracturing operations in the Marcellus shale corridor in Pennsylvania and West Virginia.

7. Defendant is a “person” as defined by Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5).

STATUTORY FRAMEWORK

8. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States except as authorized by, and in compliance with, certain enumerated sections, including Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

9. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator may issue a National Pollutant Discharge Elimination System (“NPDES”) permit which authorizes the discharge of pollutants to waters of the United States, upon the condition that such discharge will meet all applicable requirements of the CWA.

10. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

11. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

12. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to mean “any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

13. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

14. The term “waters of the United States” as defined in 40 C.F.R. § 122.2 includes but is not limited to traditional navigable waters, interstate waters, and tributaries of such waters.

15. Section 309(b) of the CWA, 33 U.S.C. 1319(b) authorizes the Administrator to commence a civil action for appropriate relief for any violation for which he is authorized to issue a compliance order under Section 309(a) of the CWA, 33 U.S.C. § 1319(a).

16. Section 309(d) of the CWA, 33 U.S.C. 1319(d) and 40 C.F.R. § 19.4 provides that any person who violates Section 301 of the Clean Water Act, 33 U.S.C. § 1311, shall be subject to a civil penalty not to exceed \$32,500 per day for each violation that occurred between March 15, 2004 and January 12, 2009 and \$37,500 per day for each violation that occurred January 13, 2009 and after.

GENERAL ALLEGATIONS

17. At all times material to this Complaint, Defendant has engaged in activities associated with the exploration and production of natural gas at facilities throughout Pennsylvania and West Virginia.

18. Defendant operated a well pad and storage facility at 301 Marquardt Road, in Hughesville, Lycoming County, Pennsylvania (the “Facility”).

19. At this Facility, Defendant conducted hydraulic fracturing. Hydraulic fracturing is a process used to release natural gas from the Marcellus shale formation that involves injecting liquids into wells at high pressure to cause fractures through which gas and/or oil can flow and ultimately be captured. During this process, the liquid injected into the wells generates a byproduct known as flowback fluid. In addition, wells also generate wastewater as a byproduct from the production of natural gas called produced fluid. The flowback fluid and produced fluid

contain brine, proppant, hydraulic fracturing chemicals, dissolved solids, heavy metals and radionuclides.

20. At the Facility, Defendant stored the flowback fluid and produced fluid in portable tanks, known as Baker Tanks, to be recycled and then reused in its fracturing operations at various wells throughout Pennsylvania and West Virginia. Defendant used mobile treatment equipment to recycle the produced water from the Baker Tanks and at times stored produced water to be transported off site to be recycled, so that the produced water can be reused.

21. On November 16, 2010, a state inspector conducted an inspection at the Facility. At this time, Defendant had approximately 57 Baker Tanks on the well pad at the northwest side of the Facility, each having a capacity of 21,000 gallons. Defendant did not have the mobile treatment equipment at the Facility on this date.

22. It was raining heavily during the inspection on November 16, 2010, and rainfall records in the area show that it rained before the inspection and continued after the inspection.

23. The state inspector observed an open valve on a 21,000 gallon Baker Tank. The contents of the Baker Tank were being released to the ground. That Baker Tank was connected internally to five other Baker Tanks, all of which stored flowback fluid and produced fluid. The flowback fluid and produced fluid stored in the Tanks contained, among other things: barium, calcium, iron, magnesium, manganese, potassium, sodium, strontium, bromide, chloride, total dissolved solids.

24. The flowback fluid and produced fluid released from the Baker Tank flowed overland to the drainage basin for the Lower Branch of the Susquehanna River. It also drained through

the surface soils and into groundwater, which was then released in seeps to a spring and an unnamed tributary known as Tributary 19617.

25. The released flowback fluid and produced fluid traveled overland from the release to a depression which contains a natural fracture with a hydrological connection to the spring. Along this surface pathway, the produced water migrated overland to the Tributary 19167 and downward through the stratus to a natural fracture. Once fluid entered the fracture system, it continued in a downward movement, recharged groundwater over time, and seeped into the Tributary 19617 by way of the spring referenced in Paragraph 24. Tributary 19617 comprised of the comingled streams flows to Sugar Run. From there Sugar Run flows to Muncy Creek. And Muncy Creek flows to the Susquehanna River. Sampling conducted after the release into Tributary 19617 and the unnamed spring showed that for up to sixty-five days pollutants associated with natural gas extraction, such as total dissolved solids, strontium, barium, bromides and chloride, were present.

26. The unnamed spring has characteristics including disturbed scour, vegetation and leaf debris forming a defined, at least seasonal, channel with intermittent flow to Tributary 19617. Tributary 19617 has regular seasonal flow, a high water mark, a defined bed and bank. Tributary 19617 flows to Sugar Run – a perennial water, which flows to Muncy Creek - a perennial water, and finally the Susquehanna River – a perennial water.

27. The Baker Tanks are “point source[s]” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

28. Defendant’s released flowback fluid and produced fluid, which contains barium, calcium, iron and other contaminants mentioned in Paragraph 23, constitutes one or more of the

following: “solid waste, chemical wastes, biological materials, radioactive materials, rock, sand, and/or industrial waste” and thus qualifies as a pollutant within the meaning of Section 502(6), 33 U.S.C. § 1362(6).

29. Tributary 19617, the unnamed spring, Muncy Creek, Sugar Run and the Susquehanna River into which Defendant discharged pollutants are “navigable waters” within the meaning of Section 502(7), 33 U.S.C. § 1362(7).

30. Defendant’s discharge of flowback fluid and produced fluid from the Baker Tank to the navigable waters referenced in Paragraph 29 constitutes the “discharge of a pollutant” within the meaning of Section 502(12), 33 U.S.C. § 1362(12).

CLAIM FOR RELIEF

(Defendant discharged pollutants to navigable waters without an applicable permit)

31. The allegations of Paragraphs 1-30 are realleged and incorporated herein by reference.

32. Defendant’s discharge of flowback fluid and produced fluid described above constitutes a discharge of pollutants from a point source to navigable waters without authority under any CWA permit in violation of Section 301(a), 33 U.S.C. § 1311(a).

33. Unless enjoined, Defendant’s violations of the Clean Water Act will continue or will recur at this or other facilities operated by the Defendant.

34. Pursuant to 33 U.S.C. § 1319, Defendant is liable for injunctive relief and penalties up to \$37,500 per day for each violation occurring after January 12, 2009.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully request that this Court:

1. Order the Defendant to comply with the CWA and perform injunctive relief as necessary to prevent future discharges and to protect and restore waters of the United States pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b);
2. Assess civil penalties against the Defendant for violating section 301(a) of the CWA, 33 U.S.C. § 1311(a), in the amount of up to \$37,500 per day per violation, as permitted by law, up to the date of judgment herein, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d) and 40 C.F.R. part 19;
3. Order Defendant to take all steps necessary to redress or mitigate the impact of its violations;
4. Award the United States its costs of this action; and
5. Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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Date: _____

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